Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers	)	**CC Docket No. 02-39**

WORLDCOM COMMENTS

WorldCom, Inc. (WorldCom) hereby submits its comments on the Notice of Inquiry (Notice) in the above-captioned proceeding. In the Notice, the Commission states that it "intend[s] to consider or evaluate the broad context and purposes of the 1996 Act to determine which, if any, equal access and nondiscrimination requirements should carry over to the present, and which should not."[1]

The Commission should preserve the pre-1996 Act equal access and nondiscrimination requirements carried forward by Section 251(g). By constraining incumbent LECs' ability to discriminate among long distance providers, the equal access and nondiscrimination requirements ensure that the long distance market remains vigorously competitive.

There is no merit to the suggestion in the Notice that competitive changes in the local market warrant modification of the equal access and nondiscrimination obligations of BOCs that have obtained Section 271 authority. Even after a BOC has obtained Section 271

authority, it continues to possess overwhelming market power in the provision of access services. Not only does the Commission continue to treat all BOCs, including those with Section 271 authority, as dominant carriers, but the Commission has previously found that the equal access and nondiscrimination requirements remain necessary post-271 entry.[2] In particular, the Commission's decision to classify the RBOC Section 272 affiliates as non-dominant carriers expressly assumed that the BOCs would be subject to the equal access rules.[3]

In light of the ILECs' continuing market power, the Notice's suggestion that the Commission could rely solely on Sections 201 and 202 or other provisions of the Act, in place of the separate equal access and nondiscrimination requirements carried forward by Section 251(g), is clearly premature. The equal access rules provide a comprehensive set of safeguards that have been demonstrated to attenuate the ILECs' ability to use their market power to discriminate among long distance providers. Not only do the equal access rules impose an explicit requirement that ILECs provide all long distance carriers with interconnection that is "equal in type, quality, and price," but the MFJ requirements and Commission orders and rules provide a detailed "blueprint" for implementing that requirement.[4] In the context of switched access, equal access includes "a program of presubscription, balloting and allocation procedures, technical interconnection standards, and the '1+' form of access for presubscribed lines, with 10XXX access for non-

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[1] Notice at ¶ 4.
[2] Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, 12 FCC Rcd 15756, 15823 (1997).
[3] Id.
[4] MTS and WATS Market Structure (Phase III), Notice of Proposed Rulemaking, 94 FCC 2d 292, 304 (1983).

presubscribed lines."[5] In particular, the Commission has treated Feature Group D as satisfying equal access requirements.[6]

Unfortunately, the Commission in the past has taken an unreasonably narrow view of the equal access obligations imposed by Section 251(g) on the RBOCs. The Commission has, for example, found marketing scripts in which the RBOCs "recommend" their own Section 272 affiliate to new customers to be acceptable, even though pre-1996 Act rules required the RBOCs to provide such customers with the names of interexchange carriers in random order.[7] Similarly, in the AT&T/Bell Atlantic Order, the Commission permitted Bell Atlantic to market its Section 272 affiliates' services to inbound callers ordering additional lines, without informing those callers that they have a choice of long distance carriers.[8] And, in the 1-800-54NYNEX Order, the Commission permitted NYNEX to offer a calling card service that gave preferred status to a particular IXC.[9]

By permitting the RBOCs to transform the frequent customer contacts that are a byproduct of the RBOCs' continued local market power into one-sided opportunities to market RBOC long distance service, the Commission has undermined the equal access principles preserved by Section 251(g). Not surprisingly, those one-sided marketing opportunities have assisted the RBOCs in gaining market share at a far greater rate than any previous new entrant in the long distance market. Bell Atlantic is reported to have achieved

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[5] See, e.g., Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd 5408, 5432 (1994).
[6] MTS and WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d 834, 859 (1984) ("We will assume that Feature Group D represents equal access in the absence of a contrary finding.")
[7] Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, Memorandum Opinion and Order, 13 FCC Rcd 539, 667-671 (1997).
[8] AT&T Corp. v. New York Telephony Company, d/b/a Bell Atlantic-New York, Memorandum Opinion and Order, 15 FCC Rcd 19997 (2000) (AT&T/Bell Atlantic Order).
[9] AT&T v. NYNEX, Memorandum Opinion and Order, 16 FCC Rcd 16087.

a 30 percent share of the residential market in New York less than two years after receiving interLATA authority;[10] by contrast, Commission data show that MCI did not achieve a 20 percent market share until 1994, a decade after divestiture, and never achieved a 30 percent market share.[11]

In the AT&T/Bell Atlantic Order, the Commission denied AT&T's complaint under Section 251(g) because, the Commission found, AT&T was unable to cite a pre-1996 Act court order or Commission order that was "squarely on point,"[12] i.e., that specifically "requir[ed] the BOCs to inform existing callers making inbound calls to request an additional line of their long distance choices."[13] The "squarely on point" standard sharply limits the effectiveness of Section 251(g) as a tool for policing discriminatory conduct by the RBOCs that have received interLATA authority. Because pre-1996 Act orders were crafted when the RBOCs were excluded from the interLATA market, those orders may not meet the "squarely on point" requirement with respect to the far broader range of discriminatory behavior that is likely to be exhibited by an RBOC that has interLATA authority and thus has the incentive to favor its interLATA affiliate.

The Commission should update and clarify the equal access rules to recognize that RBOCs that have obtained interLATA authority have greater incentives to discriminate against other long distance providers. At a minimum, the Commission should adopt the Notice's suggestion that ILECs, including RBOCs, be required to provide information regarding all available interexchange carriers to all inbound callers, not just "new

[10] Morgan Stanley Equity Research, "Does Long Distance Make Cents for the Bells," November 2, 2001, at 2.
[11] Statistics of Communications Common Carriers, 2000/2001 Edition, Table 1.5.
[12] AT&T/Bell Atlantic Order, 15 FCC Rcd 20000-20001, ¶ 9; see also 1-800-54NYNEX Order at ¶ 23.
[13] Id.

customers."[14] The BOCs' market power, and incentive to discriminate in favor of their own long distance affiliate, is the same for all inbound calls from local customers; consequently, there is no reasoned basis for imposing full equal access obligations only with respect to "new customers." Furthermore, the Commission should, based on the analysis in the Qwest/Ameritech Teaming Order, prohibit BOCs from teaming with unaffiliated providers in a manner that endorses or promotes the services of one interLATA provider over another.[15]

The Commission asks in the Notice whether equal access and nondiscrimination obligations should apply to BOCs that provide interLATA services on an integrated basis because section 272 has sunset.[16] As long as a BOC remains dominant in the provision of exchange access services, the Commission should exercise its authority under Section 272(f)(1) of the Act to extend the requirement that BOCs offer interLATA services only through a separate affiliate. Permitting a BOC to offer interLATA services on an integrated basis not only eliminates the safeguards provided by Section 272, but makes it more difficult to police even basic equal access requirements. As the MFJ Court warned, "[t]he complexity of the telecommunications network would make it possible for [the BOCs] to establish and maintain an access plan that would provide their own interexchange service with more favorable treatment than that granted to the other carriers."[17] If the Commission nonetheless permits the separate affiliate requirement to expire, it should emphasize that the BOC is not excused from the equal access and nondiscrimination requirements, and must

[14] Notice at ¶ 14.
[15] AT&T Corporation et al. v. Ameritech Corporation and Qwest Corporation, Memorandum Opinion and Order, 13 FCC Rcd 21438, 21477-21483 (Qwest/Ameritech Teaming Order),.
[16] Notice at ¶ 18.
[17] United States v. Western Electric, 552 F. Supp. 131, 190 (D.D.C. 1982).

continue to offer interconnection to interexchange carriers that is "equal in type, quality, and price" to that offered to its own interLATA operations.

For the reasons stated herein, the Commission should retain the existing equal access requirements and update those requirements to reflect the greater incentives to discriminate of RBOCs that have obtained interLATA authority.

Respectfully submitted,
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